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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

016295.0690

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on February 27, 2006

Signature

Typed or printed name Jason Lee Irby

Application Number

09/955,683

Filed

09/19/2001

First Named Inventor

Clint H. O'Connor et al.

Art Unit

2142

Examiner

Robert B. Harrell

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

Signature

Brian E. Szymczak

Typed or printed name

 attorney or agent of record.

Registration number 47,120

512.322.2548

Telephone number

 attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.



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This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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ATTORNEY DOCKET
016295.0690
(DC-03090)

PATENT APPLICATION
09/955,683



1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Clint H. O'Connor, et al.

Serial No.:

09/955,683

Date Filed:

September 19, 2001

Group Art Unit:

2142

Examiner:

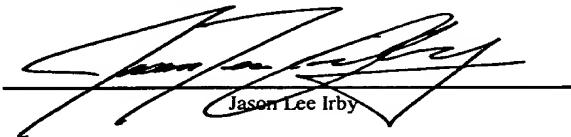
Harrell, Robert B.

Title:

**A SYSTEM AND METHOD FOR
STRATEGIC POWER SUPPLY
SEQUENCING IN A COMPUTER SYSTEM
WITH MULTIPLE PROCESSING
RESOURCES AND MULTIPLE POWER
SUPPLIES**

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Jason Lee Irby

Dear Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The following Pre-Appeal Brief Request for Review (“Request”) is being filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005 (“OG Notice”). Pursuant to the OG Notice, this Request is being filed concurrently with a Notice of Appeal. Applicants respectfully request reconsideration of the Application in light of the remarks set forth below.

REMARKS

Applicants contend that the rejection of Claims 1-25 on prior art grounds contain clear legal and factual deficiencies, as described below. In a Final Office Action dated October 26, 2005, Claims 1-25 were rejected as being anticipated by U.S. Patent No. 6,895,882 B2 to *Fung*. Applicants request a finding that these rejections are improper and allowance of these claims.

With respect to Claim 1, the Final Office Action contends that *Fung* discloses the adjustment of power supplies in order to optimize power consumption. Applicants contend that *Fung* does not disclose this limitation for the reasons described in Applicant's Response dated December 27, 2005 at Pages 6-7. In short, Applicants contend that *Fung* teaches the management of servers, using different operating modes, in order to optimize power conservation and performance but fails to make any teaching of managing power supplies in order to optimize power consumption.¹

The Advisory Action mailed January 27, 2006 maintains the previous rejections and references the comments of the Final Office Action. As such, the Claims remain rejected.

The Final Office Action cites to the last sentence of the following paragraph of *Fung* as teaching the adjustment of power supplies in order to optimize power consumption:

As general multi-power management policy it is observed based on analytical and empirical data, that there is a certain power consumption overhead associated with each server device and that it is therefore generally preferred to operate a minimum number of server modules at near their maximum output (Mode 1). When a single device approaches its capacity, other server devices are brought up from a Mode 3 to Mode 2 or Mode 1 operation. Frequently, the two servers then on line would each operate in Mode 2 until further performance is needed, at which time one would be brought to Mode 1 operation. This is merely an example scenario and many other alternative control strategies may be applied. Clearly, there is a bodies [sic] of knowledge for both open-loop and feed-back based control that may be used by those skill in the art to optimize or near-optimize some weighted combination of performance and power conservation.

Col. 36, line 54 - Col. 37, line 3. Thus, the Final Office action argument (that is maintained in the Advisory Action) appears to be that the concept of optimization and power conservation discussed with respect to the operation of server modules also applies to the

¹ It is noted in the OG Notice at <http://www.uspto.gov/web/offices/com/sol/og/2005/week28/patbref.htm> that "Applicants are encouraged to refer to arguments already of record rather than repeating them in the request." Accordingly, Applicants refer here to, and summarize, the previous arguments rather than reciting them explicitly.

operation and management of power supplies. However, the cited paragraph fails to discuss the claimed adjustment of power supplies in order to optimize power consumption. Further, while *Fung* does contemplate Power Supply Control and Monitoring features (See Col. 29, Line 65-Col. 30-Line 11), these features of *Fung* are limited to “the ability to cycle power (or voltage) or shut down a module upon receipt of an appropriate message from the Information Technology (IT) administrator’s network control station.” Col. 30, lines 1-4. As described in *Fung*, such messages are based upon the detection of an alarm or a failure condition and are not generated to optimize power consumption. See Col. 30, lines 8-11.

Applicants respectfully contend that the argument provided in the Final Office Action and maintained by the Advisory Action is clearly flawed. Namely, while *Fung* contemplates the management of server modules (using different operating modes) in order to optimize performance and power conservation, *Fung* does not contemplate the adjustment of power supplies in order to optimize power consumption. For these reasons, and the above-referenced reasons described in Applicants’ Response dated December 27, 2005, Applicants contend that the rejection of Claim 1 is improper, as is the rejection of Claim 2 through 25 for the same or analogous reasons.

CONCLUSION

As the rejection of Claims 1-25 contains clear deficiencies, Applicants respectfully request a finding of allowance of Claims 1-25. To the extent necessary, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0383 of BAKER BOTTS LLP.

Applicants enclose a Petition for One Month Extension of Time, and a check in the amount of \$120.00 for the extension fee.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2548.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorney for Applicants



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Reg. No. 47,120

Date: 2/27/2006

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